

1 Ahilan T. Arulanantham (SBN 237841)
 2 arulanantham@law.ucla.edu
 3 CENTER FOR IMMIGRATION LAW AND
 4 POLICY, UCLA SCHOOL OF LAW
 5 385 Charles E. Young Dr. East
 6 Los Angeles, CA 90095
 7 Telephone: (310) 825-1029

8 Emilou MacLean (SBN 319071)
 9 emaclean@aclunc.org
 10 Michelle (Minju) Y. Cho (SBN 321939)
 11 mcho@aclunc.org
 12 Amanda Young (SBN 359753)
 13 ayoung@aclunc.org
 14 ACLU FOUNDATION
 15 OF NORTHERN CALIFORNIA
 16 39 Drumm Street
 17 San Francisco, CA 94111-4805
 18 Telephone: (415) 621-2493
 19 Facsimile: (415) 863-7832

20 Attorneys for Plaintiffs
 21 *[Additional Counsel Listed on Next Page]*

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1 Additional Counsel for Plaintiffs

2 Jessica Karp Bansal (SBN 277347)

jessica@ndlon.org

3 Lauren Michel Wilfong (*Pro Hac Vice*)

lwilfong@ndlon.org

4 NATIONAL DAY LABORER

ORGANIZING NETWORK

5 1030 S. Arroyo Parkway, Suite 106

Pasadena, CA 91105

6 Telephone: (626) 214-5689

7 Eva L. Bitran (SBN 302081)

ebitran@aclusocal.org

8 Diana Sanchez (SBN 338871)

dianasanchez@aclusocal.org

9 ACLU FOUNDATION

OF SOUTHERN CALIFORNIA

10 1313 West 8th Street

Los Angeles, CA 90017

11 Telephone: (213) 977-5236

12 Erik Crew (*Pro Hac Vice*)

ecrew@haitianbridge.org

13 HAITIAN BRIDGE ALLIANCE

4560 Alvarado Canyon Road, Suite 1H

14 San Diego, CA 92120

Telephone: (949) 603-7411

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1 The parties submit this brief regarding outstanding discovery disputes. Lead counsel met and
 2 conferred and complied with Section 9 of the District's Guidelines for Professional Conduct.

3 **I. FACTUAL BACKGROUND & RELEVANT DEADLINES**

4 This case concerns a legal challenge pursuant to the Administrative Procedure Act (APA) and
 5 the Equal Protection Clause of the Constitution to Defendants' termination of Temporary Protected
 6 Status (TPS) designations of Honduras, Nepal and Nicaragua. The terminations affect more than
 7 60,000 individuals who have resided in the United States with TPS for at least a decade. Plaintiffs
 8 allege that the decisions were preordained and deviated from TPS prior practice and history, in
 9 violation of the APA; and that they were unconstitutionally motivated by racial animus. Plaintiffs must
 10 move for summary judgment no later than October 14.

11 Defendants produced Certified Administrative Records (CARs) for each of the challenged
 12 decisions, withholding certain records in the CARs pursuant to the deliberative process privilege
 13 (DPP). ECF 77-1, 77-3, 78-1, 78-3, 79-1, 79-3 (supplemental CAR indices and certifications of
 14 complete CAR production); ECF 77-2, 78-2, 79-2 (USCIS Decision Memoranda withheld pursuant to
 15 DPP). This Court required the production of the material withheld as DPP.

16 In orders on August 21 and September 4, following briefing between the parties, this Court
 17 ordered expedited extra-record discovery for Plaintiffs' APA and Equal Protection claims, compelling
 18 production of responsive documents by September 18. ECF 97 (ordering expedited extra-record
 19 discovery); ECF 107 (ordering the production of records concerning the three challenged decisions).
 20 Specifically, this Court ordered the production of 1) records from the CARs withheld on the grounds
 21 of deliberative process privilege, ECF 107 at 1-6; 2) Decision Memoranda and clearance records
 22 concerning the TPS periodic reviews of Nepal, Honduras and Nicaragua, ECF 107 at 7 (RFPs 1 and
 23 2); and 3) communications with or involving DHS personnel regarding the periodic review of the TPS
 24 designations of Nepal, Honduras or Nicaragua, ECF 107 at 7-8.

25 Plaintiffs also sought limited records concerning other TPS periodic reviews conducted by this
 26 administration—draft and final USCIS Decision Memoranda (RFP 4) and draft and final country
 27 conditions analyses, and communications related to these country conditions analyses (RFP 5). ECF
 28 95-1 & 95-2. This Court ruled that Plaintiffs' request for information relevant to the TPS periodic

1 review conducted by other administrations was “premature” as “Defendants have not yet produced an
 2 administrative record for countries other than Honduras, Nepal, and Nicaragua. ECF 107 at 7-8.

3 Following this Court’s September 4 order, Plaintiffs requested that Defendants produce the
 4 CARs for the 2025 TPS decisions related to the designations of the countries which have been subject
 5 to periodic reviews during this administration. Defendants declined to produce these CARs, asserting
 6 that the Court’s order did not require it and they would not do so voluntarily. By letter brief, the parties
 7 thus seek resolution of this dispute concerning whether Defendants must produce these CARs as extra-
 8 record discovery. Specifically, Plaintiffs move to compel the production of the CARs for Afghanistan
 9 and Cameroon within two days (as they have already been produced in other litigation) and the CARs
 10 for Haiti and South Sudan within seven days (the timeline this Court gave for the production of CARs
 11 of the challenged decisions). Defendants oppose the motion to compel.

12 **II. PLAINTIFFS’ POSITION**

13 In response to this Court’s September 4 order, Plaintiffs move to compel the production of the
 14 CARs for the TPS periodic reviews of this administration which are *not* challenged directly by the
 15 instant litigation—those of Haiti, Afghanistan, Cameroon, and South Sudan.¹ These are sought as part
 16 of the extra-record discovery requested by Plaintiffs, and justified in light of the finding by this Court
 17 that “this case falls within the ‘bad faith’ exception to the general practice of prohibiting extra-record
 18 discovery in APA cases,” ECF 97 at 3.

19 Limited records concerning the TPS periodic reviews conducted by this administration for
 20 countries other than the three challenged in this litigation are plainly relevant: Plaintiffs’ first APA
 21 claim challenges Defendants’ general TPS policies and practices, including “the collateral decision to
 22 end TPS for virtually every country that has it.” ECF 87 at 3; ECF 73 at 22 (describing Secretary’s
 23 “history of systematically attempting to limit TPS”). In reaching its decision that “Plaintiffs will likely
 24 succeed on the merits of their first APA claim,” this Court has already considered relevant this
 25 administration’s decisionmaking in other TPS periodic reviews. ECF 73 at 22-23 (citing this
 26 administration’s TPS decisions for Venezuela, Haiti, Afghanistan and Cameroon). A federal district

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 28 ¹ Plaintiffs do not seek the CARs for the TPS decisionmaking related to Venezuela, as Defendants
 produced those CARs and related extra-record discovery in *NTPSA I*.

court judge in *NTPSA I v. Noem* also recently found that Defendants engaged in preordained decisionmaking in connection with earlier TPS decisions. *NTPSA I v. Noem*, Case No. 3:25-cv-1766, ECF 279 at 48 (N.D. Cal. Sept. 5, 2025) (“[T]he Secretary – acting with precedented haste and in an unprecedented manner – issued the vacatur for the preordained purpose of expediting termination of Venezuela’s TPS.”); *id.* at 57 (“[T]he partial vacatur decision [of Haiti was] arbitrary and capricious because (like the vacatur decision for Venezuela) it was preordained[.]”).

While this Court did not order the production of records related to other periodic reviews in *NTPSA I*, Plaintiffs asked for none there. This is for two simple reasons: First, *NTPSA I* concerned the *first* TPS decisions of this administration; *i.e.*, there were no other prior TPS periodic reviews at that time which *could* have been produced in extra-record discovery. Second, *NTPSA II* presents a claim that was not present in *NTPSA I* and for which these records are plainly, and highly, relevant: the APA claim that these termination decisions were part of a preordained effort to terminate TPS writ large. Indeed, this claim is informed by the discovery in *NTPSA I*, which revealed the preordained decisionmaking, and which the *NTPSA I* court just found to violate the APA. *NTPSA I v. Noem*, ECF 279 at 48 & 57.

In light of this Court’s guidance that the production of the CARs for the TPS decisions concerning Haiti, Afghanistan, Cameroon, and South Sudan should precede the production of any other extra-record discovery for these countries, Plaintiffs seek the expedited production of the CARs for these countries. The CARs, particularly if the deliberative materials are also produced, see ECF 97 & 107, should provide some insight into the decisionmaking process, which is relevant to the analysis of whether these decisions were part of a preordained policy of termination.

Evidence of consistent agency practice may suffice to prove policy. *See, e.g.*, Fed. R. Evid. 406 (“Evidence of a person’s habit or an organization’s routine practice may be admitted to prove that on a particular occasion the person or organization acted in accordance with the habit or routine practice.”); *S.R. Nehad v. Browder*, 929 F.3d 1125, 1141 (9th Cir. 2019) (“As an initial matter, Appellants need not show evidence of a policy or deficient training; evidence of an informal practice or custom will suffice.”). Here, evidence of a preordained policy of termination may *only* be available through evidence of consistent agency practice. “Agency action . . . need not be in writing to be final

1 and judicially reviewable.” *R.I.L.-R. v. Johnson*, 80 F. Supp. 3d 164, 184-85 (D.D.C. 2015) (collecting
2 cases).

3 Defendants should be able to produce these CARs promptly. Where the CARs have already
4 been produced in other litigation—as is the case for Afghanistan and Cameroon—Defendants should
5 produce the CARs within two days. *Casa de Maryland v. Noem*, Case No. 8:25-cv-1484, ECF Nos.
6 59 & 64 (D.Md. June 13 & 17, 2025) (CARs for Afghanistan and Cameroon decisions produced). For
7 Haiti and South Sudan, Defendants should produce the CAR in one week, as they have done for the
8 CARs in both this case and *NTPSA I*.

9 Urgent production is of critical importance as Plaintiffs face an imminent deadline—October
10 14—by which they must file their motion for summary judgment. As a result of Defendants’ actions,
11 more than 60,000 TPS holders who have lived in the United States lawfully for years or decades have
12 lost their legal status already; the only protection potentially available to them would come as a result
13 of this summary judgment motion. In light of the Court’s ruling that the CARs must be produced prior
14 to any other extra-record discovery related to other TPS periodic review decisions, which are directly
15 relevant to the APA claim that these decisions were illegally preordained, there is a heightened need
16 for expedited production of the CARs to allow Plaintiffs to consider whether additional extra-record
17 discovery is necessary and justified at that time, and for that production to be made available in
18 advance of the deadline for Plaintiffs to file a motion for summary judgment.

19 **III. DEFENDANTS’ POSITION**

20 **The Certified Administrative Records for Haiti, Afghanistan, Cameroon, and South Sudan Are
21 Not Relevant to This Action.**

22 Plaintiffs’ request for the CARs for Haiti, Afghanistan, Cameroon, and South Sudan, is misplaced
23 where their claims pertain to a review of the Secretary’s determinations regarding Honduras, Nepal, and
24 Nicaragua. Despite Plaintiffs’ assertions that they require CARs for countries subject to periodic review
25 by the administration, it is axiomatic that an action regarding Honduras, Nepal, and Nicaragua does not
26 pertain to countries other than those identified as the subject of the complaint. ECF No.1. Moreover,
27 even if there were a relationship between the determinations for these additional countries and the
28 countries for which Defendants have already provided CARs, that connection would be made clear by

1 the CARs and extra-record discovery already ordered by this Court. ECF No. 107. For example,
 2 Plaintiffs have not shown, or even specifically alleged, how the administrative record for Afghanistan
 3 contains any information that has any bearing on the decision to terminate the TPS designation for Nepal.
 4 Or Honduras. Or Nicaragua. This dearth of a showing is easy to explain: the TPS determinations for
 5 Haiti, Afghanistan, Cameroon, and South Sudan (which was an automatic extension) are discrete and
 6 separate from the determinations under review by this Court.

7 In essence, Plaintiffs argue that they require extra-record discovery to determine whether extra-
 8 record discovery is needed. Such lines of argument are what define the term “fishing expedition.”
 9 Plaintiffs’ argument for producing CARs from additional countries outside the complaint appears to be
 10 premised upon their belief that their demand is appropriate because it is a necessary first step to opening
 11 the gateway to additional extra-record discovery. However, to make such an argument in the first place,
 12 Plaintiffs simply assume the material in unrelated CARs (and any further discovery outside those
 13 records) has a bearing on their claims. They suggest that they are entitled to the CARs for countries to
 14 subject to periodic reviews by this administration but this expansive viewpoint does not and cannot
 15 suffice to demonstrate relevance or necessity. Just like the last time this issue was raised to this Court
 16 a little over a week ago, it remains unclear what Plaintiffs are looking for, and it is speculative at
 17 best that a response would produce any relevant information. *See Blagman v. Apple Inc.*, Case No.
 18 CV 13-8496-PSG, 2014 WL 12607841, at *2 (C.D. Cal. Jan. 6, 2014) (court will not compel
 19 discovery that is “impermissibly overboard, and if answered would produce much tangential if not
 20 irrelevant information”); *Zewdu v. Citigroup Long Term Disability Plan*, 264 F.R.D. 622, 626 (N.D.
 21 Cal. 2010) (“Discovery must be narrowly tailored . . . and must not be a fishing expedition”). While
 22 Plaintiffs allege that the Secretary’s determination regarding Honduras, Nepal, and Nicaragua are all
 23 part of “efforts to terminate virtually all TPS designations,” ECF No. 1, ¶ 45, what the CARs for
 24 other countries will reveal is purely speculative and has nothing to do with Plaintiffs’ claim of
 25 deviation from prior practice, especially for country designation determinations made after the at-
 26 issue terminations.

27 Furthermore, it remains true that if there were any pre-ordained termination policy (which
 28 Defendants deny), and if such a policy were applied to the TPS terminations for Honduras,

1 Nicaragua, or Nepal, then the communications regarding that policy would certainly be found in the
 2 discovery already ordered by this Court. An expansion of this case into decisions not under review
 3 is completely unwarranted, especially when Plaintiffs merely repackage their previous demands and
 4 offer nothing concrete in support than what is best characterized as the baiting of a hook for a fishing
 5 expedition.

6 Plaintiffs demand needlessly increases the burden and expense of discovery far beyond that
 7 which is reasonable in this case for no identifiable benefit, and it should be denied.

9 Date: September 11, 2025

Respectfully submitted,

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11 ACLU FOUNDATION
OF NORTHERN CALIFORNIA

12
13 /s/ *Emilou MacLean*
14 Emilou MacLean

15
16 Michelle (Minju) Y. Cho
17 Amanda Young
18 ACLU FOUNDATION
19 OF NORTHERN CALIFORNIA

20
21 Ahilan T. Arulanantham
22 CENTER FOR IMMIGRATION LAW AND
23 POLICY, UCLA SCHOOL OF LAW

24
25 Eva L. Bitran
Diana Sanchez
26 ACLU FOUNDATION
27 OF SOUTHERN CALIFORNIA

28 Jessica Karp Bansal
Lauren Michel Wilfong (*Pro Hac Vice*)
NATIONAL DAY LABORER ORGANIZING
NETWORK

Erik Crew (*Pro Hac Vice*)
HAITIAN BRIDGE ALLIANCE

Attorneys for Plaintiffs

Date September 11, 2025

BRETT A. SHUMATE
Assistant Attorney General
Civil Division

YAAKOV M. ROTH

1 Acting Assistant Attorney General
2
3

4 ANNA L. DITCHER
5 Senior Litigation Counsel
6
7

8 ERIC SNYDERMAN
9 LAUREN BRYANT
10 CATHERINE ROSS
11 AMANDA B. SAYLOR
12 JEFFREY M. HARTMAN
13 DANIEL CAPPELLETTI
14 Trial Attorneys
15

16 /s/ William H. Weiland
17 WILLIAM H. WEILAND
18 Acting Assistant Director
19 U.S. Department of Justice, Civil Division
20 Office of Immigration Litigation
21 General Litigation and Appeals Section
22 P.O. Box 868, Ben Franklin Station
23 Washington, DC 20044
24 Tel: (202) 305-0770
25 william.h.weiland @usdoj.gov
26
27
28

29 *Attorney for Defendants*

CERTIFICATE OF SERVICE

I hereby certify that on September 11, 2025, I caused the foregoing to be electronically filed with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to all counsel of record.

ACLU FOUNDATION OF NORTHERN CALIFORNIA

/s/ Emilou MacLean
Emilou MacLean